

her work location. The injury occurred at 11:00 a.m. and her duty hours were from 8:00 a.m. to 4:30 p.m. Appellant did not stop work. The employing establishment indicated on the claim form that she was not in the performance of duty at the time of the incident as she was “walking into [the] building.”

A May 3, 2016 x-ray of the lumbar spine showed status post interbody fusion at L2-3 and L5-S1 and degenerative disc disease. On May 17, 2016 a nurse practitioner noted that appellant had left leg pain and referred her for physical therapy.² A June 20, 2016 magnetic resonance imaging (MRI) scan revealed a suspected left L1-2 posterior disc protrusion impressing the thecal sac with bilateral foraminal stenosis, retrolisthesis at T12 to L1 and L3-4, anterolisthesis of L5 in relation to S1, marked stenosis at L1 through S1, disc bulges at multiple levels, and degenerative changes.

OWCP, by letter dated February 8, 2017, informed appellant that it had paid a limited amount of medical expenses as her claim initially appeared minor and was uncontroverted. It was now formally adjudicating her claim. OWCP requested that appellant submit a comprehensive report from her attending physician addressing the causal relationship between any diagnosed condition and the alleged work incident.

In a report dated March 2, 2017, Dr. Joshua Zeidler, an osteopath, related that appellant was initially treated on May 3, 2016 for “complaints of leg pain occurring from an injury acquired at work a month or so prior to the visit.” The diagnosis was lumbago with left sciatica. Dr. Zeidler reviewed the results of diagnostic testing and opined that appellant’s “injury has most likely exacerbated her degenerative disc disease.”

By decision dated April 4, 2017, OWCP denied appellant’s traumatic injury claim. It found that she had not submitted sufficient medical evidence to establish that she sustained a diagnosed condition due to the accepted March 15, 2016 work incident.

On appeal appellant contends that she submitted a detailed medical report supporting causation.

LEGAL PRECEDENT

FECA provides for the payment of compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.³ In order to be covered, an injury must occur at a time when the employee may reasonably be said to be engaged in her master’s business, at a place where she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.⁴ For an employee with fixed hours and a fixed workplace, an injury that occurs on the employing establishment premises when the employee is going to or from work, before or after working hours or at lunch time, is

² Appellant underwent physical therapy in June and July 2016.

³ 5 U.S.C. § 8102(a).

⁴ *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

compensable.⁵ However, that same employee with fixed hours and a fixed workplace would generally not be covered when an injury occurs off the employing establishment premises while traveling to or from work.⁶ The reason for the distinction is that the latter injury is often merely a consequence of the ordinary, nonemployment hazards of the journey itself which are shared by all travelers.⁷

The employing establishment premises may include all the property owned by the employing establishment.⁸ Although it does not have ownership and control of the place where an injury occurred, the locale may nevertheless be considered part of the premises.⁹ The proximity exception to the premises rule states that under certain circumstances the industrial premises are constructively extended to those hazardous conditions which are proximate to the premises and may, therefore, be considered as hazards of the employing establishment.¹⁰

ANALYSIS

The Board finds that the case is not in posture for decision. Appellant contended that she sustained an injury to her left leg on March 15, 2016 at 11:00 a.m. when she stepped into a space on a sidewalk between concrete pads while walking with a coworker. Her duty hours were from 8:00 a.m. to 4:30 p.m. The employing establishment controverted the claim, contending that appellant was not in the performance of duty at the time of the incident as she was walking into the building. OWCP did not develop this aspect of her claim to determine whether she was in the performance of duty at the time of the alleged March 15, 2016 employment incident.

A claimant seeking compensation under FECA has the burden to establish the essential elements of her claim by the weight of the evidence, including that she sustained an injury in the performance of duty.¹¹ Nonetheless, proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other governmental source.¹² The Board will remand the case for OWCP to develop the factual evidence and determine whether appellant was in the performance of duty at the time of the March 15, 2016 incident.¹³ Following such development as deemed necessary, it shall issue a *de novo* decision on appellant's claim.

⁵ *Id.*; *Denise A. Curry*, 51 ECAB 158, 160 (1999).

⁶ *Idalaine L. Hollins-Williamson*, 55 ECAB 655, 658 (2004).

⁷ *Id.*

⁸ *See Denise A. Curry*, *supra* note 5.

⁹ *Id.*

¹⁰ *D.M.*, Docket No. 13-535 (issued June 6, 2013).

¹¹ *See Elaine Pendleton*, 40 ECAB 1143 (1989).

¹² *See Shirley A. Temple*, 48 ECAB 404 (1997); *Mary A. Wright*, 48 ECAB 240 (1996).

¹³ *See F.L.*, Docket No. 15-1172 (issued October 2, 2015).

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 5, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board